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BELL, DEWAR & HALL South Africa Docex 71 PDSB

LAWYERS ADDING VALUE THROUGH EXPERTISE

URGENT : BY HAND Your Ref:

Our Ref: Mr Nott/cgh

Mr Patrick Lekota

.2 Shell House 1 March 1994

Plein Street

Johannesburg

Dear Sir

MERRIESPRUIT MINE DISASTER

1 We refer to our discussions last night. During the course of the discussion you asked our offices to prepare a memorandum for you setting out certain aspects of possible interventions in the Merriespruit Mine disaster.

2 THE CONTEXT

2.1 The mining community as well as the entire region and the whole country, has been profoundly affected and moved by this disaster.

2.2 Press reports indicate that :-

2.2.1 on the night of 22 February 1994 at Harmony Gold Mine, a slimes dam near the Merriespruit suburb broke sending a wall of sludge about 2km long into that suburb;

2.2.2 at present, the official death toll is 14 with 31 people missing (presumed dead);

2.2.3 the damage caused has been estimated at R100 million. 80 of the 600 houses in the suburb have been totally destroyed while 200 houses have been damaged;

2.2.4 21 patients aged between 10 and 68 are in the Virginia Hospital, 6 seriously injured patients are in the Welkom Provincial Hospital while there is 1 patient in the Universitas Hospital.

DK Sinclair, PC Botha, ND Carmen, CL Green, R0 Gush. DR Hoffa, BD Jacoby, SF Langbridge, AN Leontsinis, A Mitchell, GA Nott,

ME Poee, C Rakitzis, NJ Roodt, MJ Simpson Consultant: JA Sutherland

Associates: SC Albertyn, RR Charlton, RG Robinson, DA Rosengarten, MC Van Vuren, MJ Wilso
n

BELL DEWAR & HALL
Mr Patrick Lekota
1 March 1994

Page 2

3

RECENT DEVELOPMENTS

3.1

3.2

Earlier today we were contacted by the South African Disaster Relief Agency ("SADRA") for whom we act. SADRA is a progressive organisation who have been mandated by the TEC to form a steering committee to deal with national disasters in South Africa. (This committee will be affiliated to the United Nations). SADRA will discuss their possible involvement in disaster relief in Merriespruit at their director's meeting scheduled for this Saturday. This morning we contacted Mr Dirk Snyman, the director of Mineral and Energy Affairs in the Orange Free State. He informed us that :-

3.2.1

3.2.2

3.2.3

3.2.4

The press release on page 1 of the Business Day (See copy annexed and marked "A") is premature.

A judge has not been appointed and will only be appointed upon the return of the Minister of Justice, Mr Kobie Coetzee who is at present in Namibia.

A preliminary inspection in loco, will be held on Friday, 4 March 1994. This preliminary enquiry which will be presided over by Mr Snyman and the following persons will be represented :-

3.2.3.1 the mine;

3.2.3.2 the South African Police;

3.2.3.3 the Chief Magistrate of Virginia;

3.2.3.4 various other witnesses.

Although this will be a preliminary enquiry, it will be crucial as it will lay the foundation for the statutory enquiries which will follow. We are of the view that for the sake of :-

3.2.4.1 the community;

3.2.4.2 continuity

non-partisan input at this preliminary meeting is important. The ANC has a role as such a voice.

4 ANC RESPONSE

4.1

4.2

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4.5

At the moment there is no integrated holistic approach to disaster management in South Africa. Our legislation is inadequate as it presently stands in the statute books. Such disaster relief which exists is designed to protect special interests rather than to address the redevelopment of the area affected by the disaster and the survival strategies of that society. The country is in desperate need of a comprehensive national, regional and local strategy and a state policy.

The ANC could properly intervene very powerfully in this matter of national concern.

To realise this, the ANC should formalise their representation at the forums which will no doubt be created to hear evidence surrounding the disaster. There will be an enquiry in terms of the Occupational Health and Safety Act 85 of 1993 into the reasons why the slimes dam gave way. Simultaneously there will, in all probability, be an inquest held in terms of the Inquest Act. Locus standi, the capacity to be represented at a judicial enquiry, can be established for the ANC.

The ANC and its provincial and local governments in particular must, as a matter of urgency, gain hands on experience in the management of the various structures and institutions that have been created by government.

Formal and powerful intervention and involvement in the Merriespruit disaster would enable the ANC to explore and experience the range of existing institutions and mechanisms for disaster relief. At the same time a valuable opportunity will be afforded to design alternative and more appropriate interventions and methodologies.

4.6

The time delays involved in such enquiries are such that the first provincial government of the Orange Free State will, in all probability, be responsible for administering the relief necessary. It is for this primary reason that your participation in the process from the start is imperative.

5 THE MINE AND THE MINING INDUSTRY

5.1

5.2

5.3

The National Union of Mineworkers ("NUM") has a large constituency in the province. NUM members and other mineworkers are profoundly affected by the disaster.

The Harmony Gold Mine is apparently a mine which employs some 16 000 people. In the result reasonable efforts should be made to save jobs and ensure the ongoing viability of the mine.

Political and business pressure should be brought to bear on the Harmony Gold Mine by the ANC, so that an independent person might sit on its board of directors in order to ensure that the business is not operated to the detriment of potential claimants.

6 INSURANCE CLAIMS

6.1

6.2

6.3

A large number of individuals and possibly businesses have suffered losses as a result of the disaster. These losses would normally give rise to monetary claims against the mine and/or various insurance companies. In the interests of efficiency and delivering social support, the process of administering and lodging of these claims should be centrally co-ordinated. We believe that the ANC should be involved in the co-ordination of claims.

The fact that various right wing elements are already involved in relief work points to the political utility of being involved in the disaster relief. Such relief efforts should, however, reflect the reality and concerns of the entire society which has suffered the loss.

Should it be found that there is negligence on the part of the mine, its employees or agents there will be a claim for compensation

against the mine and its insurers and/or the company contracted to maintain the slimes dam. There may also be criminal prosecutions against those who may have contravened the relevant legislation.

INQUESTS AND ENQUIRIES

7.1 Section 33 of the Occupational Health and Safety Act provides for the creation of a joint enquiry and an inquest. Mr Snyman has indicated that Kobie Coetzee as the political head of the Department of Justice will in all probability appoint a judge to head the enquiry.

7.2 The ANC should consider giving input when this appointment is made bearing in mind the importance of the enquiry.

7.3 The importance of having lawyers representing the diverse interests affected by the disaster at an inquest or at enquiries has been previously demonstrated. The weight, support and presence of the ANC at the inquest will go a long way to enhancing openness and preventing unnecessary delays and obfuscation.

7.4 Foreign and local mining experts and engineers would be necessary independent witnesses at the enquiries. An ANC request for outside independent assistance will be useful given the lack of transparency in recent mine disaster enquiries.

CO-OPERATION

The ANC should co-operate with its traditional allies in devising an approach to the disaster. Various other allegiances and co-operative arrangements might develop during the course of the ANC's involvement.

It is however, important for the ANC to seize the opportunity for involvement, without being seen to be delaying the enquiries.

We are in the process of compiling a dossier, for your information, of relevant legislation and regulations pertaining to enquiries normally instituted following such a disaster. We are also in the process of compiling a volume of press cuttings relating to the Harmony Gold Mine, the area of Virginia and the events leading up to and following the disaster.

BELL DEWAR & HALL 1 March 1994

Mr Patrick Lekota Page 6

10 As you are aware Bell Dewar & Hall has unique skills and expertise in the fields of engineering litigation, enquiries, commissions and inquests. We have been involved in similar enquiries in the past and have on our staff a trained engineer and lawyer who specialises in this field.

We await your further instructions in this matter.

Yours faithful y

BELL DEWAR & HALL

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ANDY DUFFY

THE Mlneral and Energy Affairs De art-

ment announced yesterday that a ju lclal

lutiulry would begin thls week Into the

"(:0 la 0! the Menlesprult sllmes dam, ln

whlc at least 14 people were killed.

Meanwhile, the controversy contlnued

over whether Harmony gold mlne had act-

ed on recommendatlons ln January from

Fraser Alexander to strengthen the dam.

Harmony's parent, Randgold 4; Explore-

tlon, sald at the weekend that Fraser Alexa-

ander had recommendedthls. But lt wasl

not clear how much of the work hhd been

done. Randgold spokesmen refused to com-

ment last nght.

But a Fraser Alexander source sald yes-

terday Harmony had not employed the

company to act on its advlce. A senlor

source sald thls would be "plvotal" to the

Investlgatlon. "Everything stands or falls

on thls Issue."

However, Fraser Alexander marketng

director Kevln Eborall sold It was not clear whether the company had been come mlssloned to Implement the recommendatlons, although lt had curled out repairs to the dam to the past.

He uld Fraser Alexander had tultlled Its statutory dutles. "Recommendatlons are made and the onus ls then on the mlne to determine what ln necessary and ap- . polnt a contractor."

Former mlnng engneer Jack Curtls sald on SABC TV1's Agenda programme that's cloudburst hours before the dam burst could not have had anythng to do with the disaster. Ten times more rain would have had to fall.

Harmony crltclsed medle speculation on the causes of the disaster, saying: uSuch . Ipecnlntton. whilst understandable, ls premature end ln makng an already dllycult sltuatlenxwouemhupmd ot rumours ls servng to demorallse employees and dlvert attentlon and effort away from the Immediate tasks at locating mlssng per- tor vlctims."

nergy Attatrs Free State

dlrector Dlrk Snyman sald the joint Inquest airy. headed by a judge, would be held ln the Vlrglna courts and would be open to the publcl. It should begin on Fri- DTo Pan. 2

says FW

Talkng to journalhts before the short soulon began. De Klerh utd It wu poul- ble to lead a horse to water, but not to "This ls only the end of one chapter 0! negotlatlons," he sald, addng the next and more Important phase would begln soon.

"We have more to glve, but we also want He conceded that negotlatlons were "at a blt ot a standstill at the moment" al- though he exprused the hope that today's meetng between Inkathe Freedpm Party

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CAPE TOWN - Presldent W 'de Klerk

told Parllnmeut yesterday that negotla-

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'1 mad? De Klerk uld It should be remembered

stat "d that the process of constitutional develop

t ted ment would not end wlth the electlon. more," he sald.

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 an increase in the effective tax rate l -
 34,4% (20.9%). The rate was expected I
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 Turnover Increased 15% to mam
 (R4,:bn) after a marked Increase In sales
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 .Nato downs four
 SARAJEVO _ Nato jets shot down tour
 Serb warplanes after they vlolated an ln-
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 The West's first mllltary Intervention tn
 the 23-month Bosnlan clvil war was fol-
 lowed by an ltense Bosnlan Serb heavy
 artlllery attack on the Muslim stronghold
 of Tuzla. The Bosnlan Seth and Yugoslav
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 But European Unlon (EU) countrles sold
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 Karolos Papoullas, whose country holds
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 France and Italy also backed the attack.
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 dy arrangements were still being negotlat-
 Maharaj
 tlon yesterday, but State advocate Fanus
 Coetzee end Herbst indicated that evi-
 dence of Maharaj's "contacts" in the SAP
 was contained on the cassette.
 Erasmus could not be called yet to tea-
 tify about the recording'a authenticclty be--
 cause he was under protection.
 The State indicated that Maharai's in-
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 Yesterday, additional ailegatione
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 leeol MD Paul Km'er'uid mmmmsamw
 eloning o! the rejuvenatlon pro eet to con-
 vert the Saaol l lent to e chem cal iecility
 had been corn?l eted during the period.
 "Even thou full capacity was reached
 only during anuary 1994, a substantial
 Improvement In profitability was already
 achieved during the halI-year."
 Slimes dam
 day with e the inspection, but this depend-
 ed on the Justice Department appointing a
 judge and senior counsel.
 Department omeiaIe would meet ilar-
 mony'e Iawyere today to collect all records
 related to the dam. The department and
 Fraser Alexander would also have to hand
 over documents.
 Snyman laid Harmony would be asked

to answer allegations made about the eating and running of the dam.

It was "too early" to say whether criminal charges were likely. 'Right now there is no indication of negligence at all.' Snyman and Government Mining Engineer Jen Raath were shown around the mine De Klerk

mines under debate, De Klerk said government believed that it and the other negotiating parties had done everything within reason to accommodate the main concerns of the Freedom Alliance.

"There can now no longer be an excuse for non-participation in the election and in the continuing national constitution process. I have for some time had a suspicion that the Freedom Alliance's main difficulty had not been so much with the text of the constitution, but with the broader reality of our time."

Whether the alliance parties decided to take part in the recess or not, government was determined to proceed with the elections on April 28 and with the implementation of the transitional constitution. Parties contemplating secession or the illegal seizure of power should have no Kriei

and Inkatha apparently allowed their supporters to kill, destroy and intimidate opponents without taking credible steps to control them; '

in Nogo areas. The ANC and Inkatha had created nogo areas for their political opponents, especially on the East Rand;

Illegal weapons. The power struggle unleashed by the ANC had created an inner-vuy vuy - a vacuum, a:

deputy Shill's announcement. I

Cl From Page 1

involving a top '1' rank official;

Cl Plans to distribute 300 hand grenades;

Cl Possession of rubber stamp! usually used by magistrates; '

El Involvement in counterfeiting dollars;

D Possession of stolen car radios; and

U Possession of a forged ID).

lie was allegedly also involved in buying vehicles stolen in Mozambique and brought to SA.

Ilerbst said Mharaj would have received the unlawful firearms from Tinnekei in two weeks had he not been arrested.

Plans by Malmruij to free Pretoria Inwayer Albert Vermaas from prison included taking Vermaas to Transkei before sending him to the US.

The application continues today.

Cl From Page 1

The Natri refinery had also been commissioned towards the end of the last year.

.jtThe anode coke plant in Secunda and the acrylic plant in Durban have not yet reached their full operating potential."

On future prospects Kruger said that barring unforeseen circumstances, the attributable profit for the second half should be higher than that of the first half. "It is expected that there will be a satisfactory profit growth for the financial year."

D From Page 1

yesterday" by Randgold chairman John Turner and Harmony MD Eddie Crocker. Neuter reports that Ranth sold there was no evidence yet that could pinpoint the cause of the dam burst.

Harmony said it had paid R270 000 to about 100 families affected by the dam's collapse. The ex-gratia payments, token from the Harmony Relief Fund, excluded any possible claims for damages.

Sapa reports a 71-year-old victim of the disaster, Mrs Lucky van Huyssteen, was buried yesterday. No more bodies have been found, but there is no hope of survivors among the 34 missing people.

CIFrom Page! 1

illusions about their position or the consequences of their actions.

He attested to a "deep understanding for the concerns of Zulu King Goodwill Zwelithini and his people, but unfortunately it had been impossible at this stage to reach specific agreements about these".

Government and the NP recognised the Zulu kingdom as a "unique reality" which had to have constitutional recognition.

De Klerk said he was also aware of concerns that the SACP, which was in alliance with the ANC, had "undemocratic and subversive intentions". While its ally the ANC threatened property rights.

"I understand these concerns but I am not overawed by them. I am confident that we will be able to resist and overcome the threat of any unconstitutional action."

Room by Y Cohen. 1ML hue Gallery. 1aleemenl. Cape Town.

0 See Page 4

C1 From Pages 1

right-wing leaders such as the CP's Ferdi Hartzenberg and the AWB's Eugene Terre-Blanche, as well as ANC president Nelson Mandela; and

E!The demonisation of the SAP. The ANC had created a climate of hate and suspicion against the SAP which had contributed to the murder of hundreds of policemen.

The question therefore arose. If these